



# Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

[www.merrimacknh.gov](http://www.merrimacknh.gov)

## **Memorandum**

**Date:** February 17, 2023

**To:** Richard Conescu, Chair, & Members, Zoning Board of Adjustment

**From:** Robert Price, Planning & Zoning Administrator

**Subject:** **Merrimack Parcel A, LLC (petitioner) and Merrimack Park Place Condominium (owner)** – Extension request for a Variance under Section 2.02.4 (D) of the Zoning Ordinance for a mixed use development Conditional Use Permit (CUP) to be sought from the Planning Board at a higher residential density than was originally approved by Variance (in 2015) on a lot in the industrial district. This extension request relates to the variance granted on 3/31/21. The parcel is located at 10 Premium Outlets Blvd in the I-2 (Industrial) and Aquifer Conservation Districts and the Wellhead Protection Area Tax Map 3C Lot 191-02. Case # ZBA 2021-05.

---

The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

### **Background**

The subject parcels are located at 1, 2, 3 & 4 Lexington Court (formerly 10 Premium Outlets Boulevard) in the I-2 (Industrial) & Aquifer Conservation Districts and Wellhead Protection Area. The parcel is abutted by the Merrimack Premium Outlets development to the northeast, residential uses to the north, Fidelity Investments to the south, and commercial/industrial development (including Dunkin' and Getinge) to the west. Altogether, the parcels total about 20 acres in size and have access to water from Merrimack Village District and municipal sewer. The site is currently under construction for the initial phase of a Mixed Use Development, containing 224 multi-family residential units, a hotel, and restaurant.

At the March 2021 ZBA meeting, the Board granted a variance to the petitioner that permitted the petitioner to seek an amended mixed use development Conditional Use Permit (CUP) from the Planning Board at a higher residential density than was originally approved by Variance (in 2015) on a lot in the industrial district. As the Board knows, variances have a valid approval period of two years before they expire unless they are vested beforehand. While the petitioner is currently before the Planning Board under the 2021 variance with an amended CUP application, the language in Section 8.04 of the Zoning Ordinance specifies that site plan approval, issuance of a building permit or certificate of occupancy are required to vest a variance. Since the 2021 variance is specifically for Phase 2 of the development, the petitioner needs to get that approval extended by the ZBA in the interim while they work through the Planning Board process to prevent the expiration of the 2021 variance.

**Standard of Review**

Section 8.04 of the Zoning Ordinance states that “any application to extend the two-year validity period shall demonstrate to the satisfaction of the Zoning Board of Adjustment that it was impossible or impractical to receive the necessary approvals to move forward in reliance on the permit [variance] granted within two years.” Therefore, it is the burden of the petitioner to demonstrate that they have met that standard in order for an extension to be granted.

**Staff Guidance on Potential Motions**

Staff cannot make specific recommendations for action to the Zoning Board of Adjustment due to the Board’s status as a quasi-judicial body. However, staff suggests the Board use one of the following templates for a motion to grant or deny the variance, depending whichever course of action the Board deems appropriate:

**Potential Motion to GRANT the Extension:**

***“I make a motion that the Board finds the petitioner has adequately demonstrated to the Zoning Board of Adjustment that it was impossible or impractical to receive the necessary approvals to move forward within two years of the variance being granted, and the Board adopts the petitioner’s responses as the Board’s findings of fact, and further, to grant a two-year extension of the variance originally granted on March 31, 2021 as authorized under Section 8.04 of the Zoning Ordinance.”***

**Potential Motion to DENY the Extension:**

***“I make a motion to deny the requested extension of the variance originally granted on March 31, 2021 because the petitioner failed to adequately demonstrate to the Zoning Board of Adjustment that it was impossible or impractical to receive the necessary approvals to move forward within two years of the variance being granted.”***

Ec: Merrimack Parcel A, LLC and Slate Merrimack Acquisition, LLC, Applicants/owners  
Morgan Hollis, Gottesman & Hollis  
Gordon Leedy, AICP, Tighe & Bond  
Paul Micali, Town Manager  
Building Department Staff  
Fire Prevention Staff  
Public Works Department  
Merrimack Village District  
Cc: Zoning Board File